

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

NICHOLAS MITSAKOS,

Defendant.

INDICTMENT

¹⁶ Cr. **16 CRIM 631**

COUNT ONE

(Conspiracy to Commit Securities Fraud and Wire Fraud)

The Grand Jury charges:

1. From at least in or about May 2014 through in or about August 2016, in the Southern District of New York and elsewhere, NICHOLAS MITSAKOS, the defendant, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff and Title 17, Code of Federal Regulations, Section 240.10b-5; and wire fraud, in violation of Title 18, United States Code, Section 1343.

2. It was a part and object of the conspiracy that NICHOLAS MITSAKOS, the defendant, and others known and unknown, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the

mails, and of the facilities of national securities exchanges, would and did use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon other persons, in violation of Title 15, United States Code, Sections 78j(b) and 78ff.

3. It was a further part and object of the conspiracy that NICHOLAS MITSAKOS, the defendant, and others known and unknown, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

Overt Acts

4. In furtherance of the conspiracy and to effect its illegal objects, NICHOLAS MITSAKOS, the defendant, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. In or about May 2014, MITSAKOS and a co-conspirator not named as a defendant herein ("CC-1") retroactively modified a hypothetical Bloomberg portfolio to enhance the supposed returns of that portfolio, and then caused those returns to be disseminated to potential investors as indicative of actual trading performance.

b. In or about September 2015, MITSAKOS accepted an investment of approximately \$1,993,500 from a Cayman Islands-based fund ("Victim-1"), which MITSAKOS used, in part, to pay personal expenses such as credit card debt and rent.

(Title 18, United States Code, Section 371.)

COUNT TWO

(Securities Fraud)

The Grand Jury further charges:

5. From at least in or about May 2014 through in or about August 2016, in the Southern District of New York and elsewhere, NICHOLAS MITSAKOS, the defendant, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails, and

of the facilities of national securities exchanges, used and employed manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon other persons, to wit, MITSAKOS made, and caused to be made, false representations to investors regarding the returns and assets under management of Matrix Capital Management LLC ("Matrix"), a hedge fund purportedly operated by MITSAKOS.

(Title 15, United States Code, Sections 78j(b) & 78ff;
Title 17, Code of Federal Regulations, Section 240.10b-5;
and Title 18, United States Code, Section 2.)

COUNT THREE

(Wire Fraud)

The Grand Jury further charges:

6. From at least in or about May 2014 through in or about August 2016, in the Southern District of New York and elsewhere, NICHOLAS MITSAKOS, the defendant, willfully and knowingly, having devised and intending to devise a scheme and

artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, MITSAKOS made, and caused to be made, false representations, through means including emails, to investors regarding the returns and assets under management of Matrix, and misappropriated investor funds for his own use.

(Title 18, United States Code, Sections 1343 and 2.)

FORFEITURE ALLEGATION

7. As the result of committing one or more of the foregoing offenses alleged in Counts One through Three of this Indictment, NICHOLAS MITSAKOS, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461, any and all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses alleged in Counts One through Three of this Indictment.

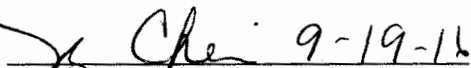
SUBSTITUTE ASSET PROVISION

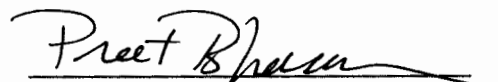
8. If any of the forfeitable property described above, as a result of any act or omission of NICHOLAS MITSAKOS, the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property.

(Title 18, United States Code, Section 981;
Title 21, United States Code, Section 853; and
Title 28, United States Code, Section 2461.)


FOREPERSON


PREET BHARARA
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

NICHOLAS MITSAKOS,

Defendant.

INDICTMENT

16 Cr.

(18 U.S.C. §§ 2, 371, 981, 1343;
15 U.S.C. §§ 78j(b) & 78ff;
21 U.S.C. § 853; 28 U.S.C. § 2461;
17 C.F.R. §§ 240.10b-5.)

PREET BHARARA
United States Attorney

A TRUE BILL

Foreperson.

J. Chin 9-19-16

9/19/16 Filed indictment

[Signature]

Judge Wetburn